

REMARKS

This reply is submitted pursuant to 35 U.S.C. §132 and 37 C.F.R. §1.111. The Office Action was carefully considered by applicant and undersigned attorney. Reconsideration is respectfully requested.

As the Office Action was "Final", this reply is submitted under the provisions of 37 C.F.R. §§1.113 and 116. It is believed that the amendment will require only a cursory review by the Examiner and such amendment clearly places the application in a condition for allowance. In the event that the Examiner should not find the application in a condition for allowance, the amendment is believed to remove issues for appeal and should accordingly be entered.

1. Summary of the Office Action.

Claims 1-5 were pending.

Claims 1-4 stand rejected under 35 U.S.C §102(b) over Carrington (US 6408446).

Claim 5 stands rejected under 35 U.S.C §103(a) over Fee *et al.* (US 5689836) in view of Carrington.

2. Discussion.

Claims 1 and 5. Claim 1 was rejected under 35 USC §102(b) as being anticipated by Carrington and claim 5 was rejected under 35 USC §103(a) as being unpatentable over Fee *et al.* in view of Carrington. The claim is amended to patentably distinguish and limit over the applied references by

defining the invention to require that the weights in the claimed “trousers” be heavy. The weight is of a magnitude to provide a therapeutically effecting amount of muscular training. The trousers are a form of apparel that are designed to be worn on the outside as an outer garment. This structure and function is not shown, suggested or made obvious by the applied art. In contrast, Carrington discloses pads 30 that are for absorbing shock and are placed in “undershorts” 10. There is no disclosure that the pads are heavy. Applicant submits that because they are disposed in undergarments they are inherently lightweight. Fee et al. also disclose an “undergarment” with pads 44, formed of foam and fabric, that are intended for protection purposes. Fee et al. do not disclose that their pads are heavy, or are for muscular training. Again, because they are undergarments, they are submitted to be inherently of light weight. These differences are patentably significant because the amended elements relate to advantages and benefits described in the specification that the invention has in terms of providing a garment that is heavy enough to provide muscular training, yet flexible enough and having a particular configuration so as not to impede movement in the wearer. Fee et al. and Carrington would have been motivated to gain such advantages but for the unobviousness of the now claimed invention. It is submitted that this amendment clearly indicates a narrower interpretation than that of the previously presented and new claims, which interpretation patentably avoids the applied art. Withdrawal of the rejection is requested.

Remaining Claims. The remaining dependent claims each adds at least one limitation to the elements of its base claim, and is therefore deemed to be allowable with such base and any intervening claim, at least for this reason.

3. Conclusion.

The pending claims are believed to be patentable for the reasons stated above. The amendments are believed to be supported by the specification, claims and drawings as filed. It is believed that this case is in a condition for allowance. Reconsideration and favorable action are respectfully requested.

Should the Examiner believe that telephone communication would advance the prosecution of this case to finality, she is invited to call at the number below.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time under 37 CFR 1.136(a), provided a Petition is not submitted separately.

Please charge any fee due not paid by a check or credit card provided herewith, and/or charge any underpayment in any fee, and/or credit any overpayment in fee, to Deposit Account No. 19-2381.

ANY FEES DUE ARE CALCULATED AS FOLLOWS:		<u>NUMBER</u>	<u>FEE</u>
TOTAL Claims Remaining over that Previously Paid:	None		\$0
INDEPENDENT Claims Remaining over that Previously Paid:	None		\$0
	SUM Claim Fees:		\$0
EXTENSION Fees:			\$555
OTHER Fees:			\$0
	<u>TOTAL AMOUNT (if any)</u>		\$555

☐ Paid by enclosed check.

☒ Paid by enclosed Credit Card Payment Form(s) PTO-2038.



Respectfully submitted,

Date: 7-9-09

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REQUEST FOR EXTENSION OF TIME

Pursuant to 37 C.F.R. 1.136(a), Applicant(s) requests that a 3 month extension be granted in which to file the attached communication from the applicant(s).

A \$ 555 payment, for a ☒ small ☐ large entity, is enclosed for the fee required under 37 CFR 1.17.

Please charge any additional or underpayment in fee due, or credit any overpayment, to Deposit Account No. 19-2381.

Respectfully submitted,

Date: 7-9-09

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